

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF: PETITION FOR RATE INCREASE BY HOOSIER HILLS MARINA, INC.))))	ADMINISTRATIVE CAUSE NUMBER: 09-094P
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**REPORT OF HEARING OFFICER, INCLUDING FINDINGS
AND PROPOSAL TO THE NATURAL RESOURCES COMMISSION
AS TO ITS RECOMMENDATIONS TO THE U.S. ARMY CORPS ENGINEERS**

1. PETITION FOR RATE INCREASE BY HOOSIER HILLS MARINA, INC.

Jeff Dukes, President of Hoosier Hills Marina, Inc. (*Hoosier Hills*), filed a petition dated March 18, 2009 with the Division of State Parks and Reservoirs of the Department of Natural Resources (*Department*) seeking a rate establishment for facilities operated on Patoka Lake. The petition was forwarded to the Natural Resources Commission (*Commission*) and filed on April 28, 2009. Mr. Dukes seeks to have the interim rate of \$4,840.00, previously approved by the Department, for its 22' x 80' slips established as a permanent rate. Along with the petition, Mr. Dukes provided information reflecting that Fourwinds Marina, located on Monroe Lake, rents a 75' slip for \$6,967.00 and that Kent's Harbor Marina, operated on Brookville Lake, rents a slip 70' in length for \$6,775.00.

2. SCOPE OF REVIEW

Hoosier Hills Petition is governed by a nonrule policy document approved by the Commission as Information Bulletin #20 (Second Amendment) (<http://www.ai.org/nrc/policy/marinara.html>), and published on the INDIANA REGISTER database website as 20090121-IR-312090045NRA. The Commission reflected that the purpose of the document was to implement an informal process for the review of ratemaking recommendations for resorts and marinas under lease with the Department.

According to the nonrule policy document, a lessee desiring a rate establishment or increase shall submit its request to the Department, in accordance with the existing lease agreement, by April 1 of the year preceding the year in which the lessee expects to implement the rate. Upon receiving a request, the Department informs the Division of Hearings of the Commission (*Hearings Division*). The Hearings Division assigns a cause number and, in consultation with the Department, selects the date and time for a rate hearing to be held in Indianapolis. The Department advises the lessee of the date, time, and location in Indianapolis of the rate hearing, at which time the lessee and affected persons may provide comments to a Commission hearing officer.

Petitions, requests, documentation, exhibits, and other pertinent materials concerning the proposed rate request are to be available for the public to review at the lessee's business office, during normal business hours. The lessee shall provide notice of the proposed rate petition to each slip or buoy renter. A copy is also to be made available for the public to review at the Division of State Parks and Reservoirs, 402 West Washington Street, Room W298, Indianapolis, Indiana, 46204. Affected persons may send written comments concerning the proposed rate to the Commission's Division of Hearings. In accordance with the existing lease agreements, the Department is to analyze comparable facilities to compare rates with those sought by the lessee. Information used in the analysis is to be available for inspection at the Division of State Parks and Reservoirs office in Indianapolis.

Any person may attend the rate hearing and provide oral or written statements. The hearing officer shall conduct the hearing in an orderly and informal manner designed to develop a fair and complete agency record. The Administrative Orders and Procedures Act (IC 4-21.5) does not apply, but the hearing officer is delegated full authority by the Commission to implement IC 14-11-1-3, and to make any orders reasonable in implementing the purpose of the nonrule policy document. The lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the Department, and oral and written statements received during the rate hearing form the record upon which the hearing officer shall review the request.

Following the completion of the review, the hearing officer is to prepare a written report to the Commission. The report is to include written findings with respect to the requested rates and a proposal to the Commission with respect to recommendations to the U. S. Army Corps of Engineers. The hearing officer shall also forward a copy of the report to the lessee, the Department, and any other person who requests a copy.

The hearing officer is to present the findings and recommendations to the Commission during a meeting to be held in August or September. During that meeting, the Commission will either recommend approval of the rates, disapproval of the rates, or approval of a rate in an amount less than requested by the lessee. Recommendation for favorable consideration of a rate will not be withheld unless, in the opinion of the Commission, fees submitted exceed fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

3. PUBLIC HEARING AND WRITTEN COMMENTS

Hoosier Hills provided the requisite notice of its petition to slip and buoy renters. The notice provides details of the proposed rate establishment and announces the ability of individuals to provide input regarding the petition. A public hearing was conducted as scheduled on July 7, 2009. Comments were received during the hearing as follows:

A. Petitioner at Public Hearing

Jeff Dukes, Hoosier Hills Marina

Mr. Dukes explained during the public hearing that the two houseboat slips at issue are 22' x 80'. One of these slips is rented and Mr. Dukes advised that there are two individuals potentially interested in renting the second slip. The rate that is currently being charged for the rental of these new slips was approved as an interim rate by the Department and Hoosier Hills is requesting Commission establishment of that interim rate as a permanent rate.

The two slips at issue are two feet wider than Hoosier Hills' next smaller sized slip, which is 20' x 80'. The rate for Hoosier Hills' 20' x 80' slips was established by the Commission in 2008 and the square footage rate for the new slip is the same as the square footage rate for the 20' x 80' slips.

Mr. Dukes stated that he had provided the Department with comparables using Fourwinds Marina's and Kent's Harbor's rates as comparable to Hoosier Hills. Gary Miller, Department representative, acknowledged receiving the comparables provided by Mr. Dukes but explained that he did not have it available at the meeting..

Mr. Dukes expressed that Hoosier Hills offers dockside water and dockside sewage pump-out that was within 100 feet of every boat in the marina. According to Mr. Dukes, none of the marinas included as comparable for analysis by Mr. Miller offered water and sewage services of a similar type.

Mr. Dukes, with Mr. Miller's contributions, offered some insight regarding amenities available at the marinas included by Miller as comparables. It was agreed that Kent's Harbor has some lodging, a restaurant and a golf course, Hammond marina is located close to a casino and maintains an on-site restaurant, Conley Bottoms provides camping facilities and a restaurant while Lees Ford offers cabin rentals, a restaurant and a bar/lounge. In addition to the marina operation, Hoosier Hills provides floating cabins and a recently opened pizza eatery and plans annual events for its patrons.

Gary Miller, Department's Assistant Director of Inns and Concessions

Mr. Miller brought a spreadsheet of comparable rates used for analysis that included Kent's Harbor, Harbor Lights, Conley Bottom, Hammond Marina and Lees Ford Marina. While all of the identified marinas are comparable to Hoosier Hills, Mr. Miller stated that Conley Bottom is probably the most similar to Hoosier Hills in terms of number and sizes of slips, amenities and other available amenities.

B. Affected Persons at Public Hearing

No member of the public attended or offered comments at the public hearing.

C. Affected Persons' Written Comments

No comments were received outside of the public hearing.

4. RECOMMENDATION BY THE DNR DIVISION OF PARKS AND RESERVOIRS

As anticipated in the nonrule policy document, the Department completed a comparative review of slip rates for Hoosier Hills. Mr. Miller prepared a spreadsheet, Exhibit A, of comparable facilities.

The spreadsheet reflects that the rates sought by Hoosier Hills is \$715.00 higher than the rate charged by Conley Bottom for the same sized slip but two other facilities rent same sized slips at rates either \$210.00 or \$2,440.00 higher. Of the two remaining facilities considered as comparable to Hoosier Hills, one rents a five foot shorter slip for only \$215.00 less and the other rents a ten foot shorter slip for \$1,935.00 more than Hoosier Hill's proposed rate.

5. FINDINGS AND PROPOSAL BY THE COMMISSION'S DIVISION OF HEARINGS

A. Findings

The scope of the review accorded by the Commission in Information Bulletin #20 is addressed to petitions for rate establishment or increase at marinas and related facilities on properties owned or leased by the Department. Although the Department may appropriately exercise whatever rights are provided in a ground lease with respect to marina facilities, as well as any other rights provided by law or equity, the scope of review for the purpose of setting rates at marinas and related facilities is determined by Information Bulletin #20, which specifies that the lessee "shall include justification for the request along with comparable rates from other marinas." Information Bulletin #20 proceeds to specify that "the department will analyze comparable facilities to compare rates with those sought by the lessee."

The Commission's role in the setting of rates at marina facilities on Department leased or owned properties is to offer a recommendation regarding the appropriateness of the rates to the U. S. Army Corps of Engineers (*USACE*), which will ultimately determine to accept or reject the recommendation. In exercising its responsibility to offer a recommendation to the USACE, the Commission has charged the appointed hearing officer with the responsibility to review the record, which includes the "lessee's request and any supporting documentation, written comments provided by affected persons, the analysis by the department, and oral and written statements received during the rate hearing" in preparing a report and proposed recommendation for Commission consideration.

The Commission, through its adoption of Information Bulletin #20 established as fundamental to a determination of the appropriateness of a proposed rate the consideration of rates charged by other marinas for comparable facilities. The Department's provided spreadsheet of comparable facilities reveals that the rates proposed by Hoosier Hills are generally consistent with rates charged by other marinas for same or similar sized slips. Hoosier Hills' proposed rate is approximately \$700.00

higher than the rate charged by Conley Bottom, which according to Mr. Miller is the marina with the most similar facilities. However, Hoosier Hills' sought rate is less than the rate charged by the remaining four (4) marinas¹

Hoosier Hills has already rented one of the new slips and reports having two (2) people potentially interested in the remaining 22' x 80' slip.

The preponderance of the evidence available for consideration reveals that the interim rates previously authorized by the Department for the 22' x 80' slips do not exceed fair market rates and should be established as permanent rates as sought by Hoosier Hills.

B. Proposal

Consideration of all available information indicates that the rate of \$4,840.00 as sought by Hoosier Hills for the 22' x 80' slips, beginning with the 2010 season should be recommended to the U. S Army Corps of Engineers for approval.

Dated: July 29, 2009

Sandra L. Jensen
Hearing Officer

Service List:

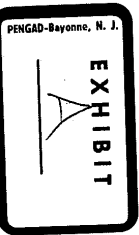
cc: Gary Miller, DNR, Division of State Parks and Reservoirs
Jeff Dukes, Hoosier Hills Marina, Inc.

¹ For comparison purposes the square footage of the Kent's Harbor slip was calculated using the dimension 70' x 22' to arrive at a square footage rate of \$4.39, and the Harbor Lights slips square footage was calculated using the dimension of 75' x 22', which equates to a rate of \$2.80 per square foot. Hoosier Hills square footage rate is \$2.75. (The public hearing officer notes that she is uncertain whether the width of the Kent's Harbor and Harbor Lights slips are 20' or 22'. A square footage calculation based upon a 20' width would increase the square footage rate being charged by Kent's Harbor and Harbor Lights making Hoosier Hills' proposed rate even less by comparison.)

AGENDA ITEM #9

Hoosier Hills Marina
2009 Rate review for 2 interim slips

80' open annual slip	Hoosier Hills	Kent's Harbor	Harbor Lights	Conley Bottom	Hammond Marina	Lees Ford Marina		
	4840	70'	6775	75'	4625	4125	7280	5050



AGENDA ITEM #9